



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Tapex American Corp.--Reconsideration

File: B-224206.2

Date: June 24, 1987

DIGEST

Prior decision sustaining protest of partial cancellation of a solicitation is reversed to deny the protest because the agency has provided information from two firms that competed under a prior procurement which indicates that reinstatement of the canceled portion of the solicitation and awards thereunder would prejudice other bidders or other potential bidders.

DECISION

The General Services Administration (GSA) requests reconsideration of our decision in Tapex American Corp., B-224206, Jan. 16, 1987, 87-1 C.P.D. ¶ 63, in which we sustained Tapex's protest against the partial cancellation of invitation for bids (IFB) No. 2F-EAX-A4362-S, issued by GSA for Federal Supply Schedule requirements for steel strapping, seals, and nonmetallic strapping. We held that the solicitation should be reinstated and contracts awarded to Tapex and Plastic Monofil Co., Ltd. (PMC), for the items on which each was the low bidder, since such awards would meet the government's needs and would not prejudice any other firms.

GSA, in requesting reconsideration, disputes our finding regarding prejudice, and points out that award to PMC would have to be on terms that vary from those in the IFB. For the reasons set forth below, we reverse our prior decision and we deny Tapex's protest.

The IFB included 12 line items of nonwoven, nonmetallic strapping, 9 of which were set aside for small business concerns. Tapex was low on five line items and PMC was low on seven. GSA found PMC nonresponsible after discovering that the firm intended to furnish woven strapping. Subsequently, however, GSA realized that it inadvertently had specified only nonwoven, nonmetallic strapping, when woven nonmetallic strapping would be just as acceptable; the

agency speculated that the erroneous requirement for nonwoven strapping may have been the reason two companies that bid on nonmetallic strapping under the prior solicitation did not bid under this one. GSA consequently decided to cancel the nonmetallic strapping part of the IFB.

Tapex, which intended to furnish nonwoven strapping, argued that GSA's mistaken requirement that the strapping be only nonwoven was not a sufficient reason for cancellation since the requirement could be waived. Tapex asserted that PMC is the only small business manufacturer that makes woven strapping, so that any other small business manufacturer or supplier that failed to bid must have done so for reasons other than the requirement for nonwoven strapping. We agreed, concluding that, contrary to GSA's speculation, awards under the IFB would not prejudice other bidders or potential bidders. We also found that the record indicated GSA received the same degree of competition, including price competition, under the canceled IFB that it would have received had the requirement for a nonwoven item not been used. We thus recommended reinstatement of the IFB and award to Tapex, as well as award to PMC, since the record clearly indicated that both woven and nonwoven strapping met the government's actual needs.

GSA argues that our prior decision is erroneous with respect to our finding that awards to Tapex and PMC would not prejudice other potential bidders. GSA asserts that the two bidders on the prior IFB for nonmetallic strapping--the firms the agency had speculated might have bid under the instant solicitation but for the nonwoven specification--in fact offered woven strapping previously, and claims that award under an IFB improperly requiring only nonwoven strapping therefore would prejudice them.

After GSA filed this request for reconsideration, we asked the agency to explain the basis for its assertion that the two companies that bid under the prior solicitation offered woven strapping. GSA then contacted the two firms. According to GSA, one of the firms, a dealer, stated that it has been dealing almost exclusively in woven strappings for the last several years and that it was bidding a woven strapping in response to the prior solicitation. The other firm, a manufacturer, refused to verify that it was offering woven strapping under the prior solicitation but did tell GSA that it only recently had begun manufacturing woven strapping in substantial quantities.

We think the statement made to GSA by the strapping dealer that it has been dealing almost exclusively with woven strapping for the last several years supports GSA's assertion that the company bid to supply woven strapping in the

prior procurement, and did not bid here because of the requirement for nonwoven strapping. The manufacturing firm's response to GSA is somewhat equivocal, but the company's assertion that it now manufactures substantial quantities of woven strapping suggests that the firm may well not have competed in the instant procurement because of the nonwoven strapping specification.

On reconsideration, we are persuaded that in view of the IFB's failure to state that woven strapping would be acceptable, awards to Tapex and PMC would prejudice other bidders or other potential bidders; at the least, GSA's view in that respect certainly is not unreasonable. Where that is the case, the integrity of the competitive bidding system precludes an agency from awarding a contract on terms that are at variance with the specifications under which the competition was conducted. See W.H. Smith Hardware Co., B-219987.2, Jan. 21, 1986, 86-1 C.P.D. ¶ 62.

Accordingly, our prior decision is reversed, and Tapex's protest of the partial cancellation of the IFB is denied. We therefore withdraw our recommendation that GSA reinstate the canceled portion of the IFB and award contracts to Tapex and PMC.

for Milton J. Fowler
Comptroller General
of the United States